IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 417 OF 2005

GHCL Limited .. Petitioners

V/s

Asset Reconstruction Company & Ors. .. Respondents

Mr.S.G. Anne with Ms.Akhila Kaushik i/b Thakkar & Bali for the Petitioners.

Mr.P.K. Samdani i/b Amarchand & Mangaldas for Respondents Nos.1 and 2.

Mr.Yogesh Chowak i/b Udwadia & Udeshi for Respondent No.3.

CORAM : H.L. GOKHALE &
S.C. DHARMADHIKARI, JJ.

DATE : 15TH FEBRUARY 2005

P.C. :

1. Heard the learned counsel for the parties.

2. Respondents Nos.1 and 2 are selling the shares belonging to one Saurashtra Welfare Foundation and Mysore Cements Ltd. to the tune of 32.2% in Saurashtra Chemicals Ltd. Certain offers were sought from the intending buyers. The Petitioners gave their offer in pursuance to the Invitation for Expression of Interest ("E.O.I. in short) published by Respondent No.1 on 26th October 2004. The Respondents Nos.1 and 2 have rejected the proposal made by the Petitioners by their letter

dated 7th December 2004 by informing them that they are not in a position to shortlist their offer since they had not satisfied the criteria of best EOI. Being aggrieved by this communication, the present petition has been filed. The petition seeks a mandatory direction that Respondents Nos.1 and 2 ought to be directed to withdraw or cancel this E.O.I. dated 26th October 2004. By way of an interim prayer, a request is made that Respondents Nos.1 and 2 be restrained from proceeding in any manner with securitisation of the assets of Saurashtra Chemicals Ltd. and from giving effect to any decision pursuant to this EOI dated 26th October 2004.

3. Mr.Anne, learned counsel for the Petitioners, submitted that the entire action of the Respondents was under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (shortly called as "Securitisation Act") and that being so, the guidelines framed by Respondent No.3 - Reserve Bank of India were binding on Respondents Nos.1 and 2. He referred us to the guidelines published in the Notification dated 23rd April 2003 as amended by further Notification dated 29th March 2004. These guidelines are expressly stated to be issued amongst others under the powers available under

sections 9 and 12 of the Securitisation Act. Mr.Anne particularly referred to clause 7(2) of these guidelines which lays down that no Securitisation Company or Reconstruction Company shall take measures specified in section 9(a) and (b) of the Act, until RBI issues necessary guidelines. He pointed out that no such guidelines had been issued. He referred to guideline No.17 which provides for exemptions to be given by RBI and pointed out that in the instant case no exemption had been granted to Respondent No.1 from these guidelines. He submitted that measures under section 9(a) of the Securitisation Act could not be taken as also under section 9(b) until RBI issues necessary guidelines in this behalf. His further submission was that the proposed sale of the shares is essentially under section 9(a) of the Securitisation Act and, inasmuch as such guidelines were not issued nor exemption granted, the action was bad in law.

4. Mr.Samdani, learned counsel for Respondents Nos.1 and 2, on the other hand, pointed out that the Measures for assets reconstruction, which are contemplated under section 9 of the Securitisation Act, are "without prejudice to the provisions contained in any other law for the time being in force", which is what the section itself states to begin with. He stated

that the action being taken was to sell the shareholding of the two entities in Saurashtra Chemicals Ltd. This was with their full consent and permission and this was in exercise of rights under section 172 of the Indian Contract Act. The action was not under the Securitisation Act in any way.

5. We have noted the submissions of both the counsel. The Securitisation Act is an enabling enactment and it is an enactment over and above the other relevant provisions of various statutes which otherwise prevail. The submission of the Petitioners that the Respondents ought to be directed to proceed in a particular manner cannot, therefore, be accepted in these circumstances. As noted above, section 9 of the Securitisation Act itself records that the measures contemplated thereunder are without prejudice to the provisions contained in any other law for the time being in force. We may also note that section 31(b) of the Securitisation Act specifically provides that the provisions of this Act shall not apply to a pledge of movables within the meaning of section 172 of the Indian Contract Act. The shares of these two entities have been pledged and, therefore, to come out of the present difficulties of the Saurashtra Chemicals Ltd., this measure has been resorted to. It is not possible to

accept that the measure is one under the Securitisation Act nor can therefore it be stated that the action is bad in law in any way for not complying with any of the RBI Guidelines. Petition is dismissed.

6. We note that Mr.Anne took us through various provisions of bid document to submit that the entire exercise was one under the Securitisation Act. However, for reasons noted above, we are of the view that it is not so.

(H.L. GOKHALE, J.)

(S.C. DHARMADHIKARI, J.)